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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Assessment and Collection) MD Docket No. 98-200
of Regulatory Fees for)
Fiscal Year 1999)

REPLY OF COMSAT CORPORATION

COMSAT Corporation herein files its Reply to the Comments filed by PanAmSat Corporation ("PanAmSat") and GE American Communications, Inc. ("GE") in response to the Commission's Notice of Inquiry ("Notice") in the above-captioned proceeding.

In their Comments, PanAmSat and GE ask the Commission to amend its regulatory fee schedule to assess a space station or other fee on COMSAT for "its use of and access to, the INTELSAT and Inmarsat systems."¹ Similar arguments have been raised before by these very same parties,² and

¹ Comments of PanAmSat at 11; Comments of GE at 8.

² See, e.g., Comments of PanAmSat and GE in MD Dockets 95-3, 96-84, and 96-186.

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have been rejected by both the Commission³ and the Court of Appeals.⁴

While COMSAT is more than willing to pay annual regulatory fees which are commensurate with the costs of regulating COMSAT, the Commission cannot do what Congress and the courts have clearly forbidden. The Commission cannot impose space station fees on COMSAT for the INTELSAT and Inmarsat space stations nor can it impose a Signatory fee or any new category of fee on COMSAT. In determining what is COMSAT's fair share of regulatory fees, the Commission should reject the claim by GE and PanAmSat that COMSAT should pay the entire cost of regulating COMSAT on the theory that it is somehow the beneficiary of such regulation. On the contrary, COMSAT's competitors benefit far more from the ongoing regulation of COMSAT than COMSAT does; and COMSAT's competitors cause most of the costs involved in regulating COMSAT by filing pleadings that are often repetitive or frivolous. In fact, PanAmSat alone has filed more than 100 pleadings against COMSAT since 1985, and on all but a handful of occasions the Commission has

³ See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13152, 13550 ("Congress did not intend for the Commission to assess a fee per space station for the space segment facilities of INTELSAT and Inmarsat"). See also *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17187 (1997) (FCC "decline[s] to assess a fee to recover the costs of [COMSAT's] regulatory activities in connection with COMSAT's role as U.S. Signatory.").

⁴ *COMSAT Corp. v. Federal Communications Comm'n*, 114 F.3d 223 (D.C. Cir. 1997).

rejected PanAmSat's position.

I. COMSAT pays a share of regulatory fees which is reasonably related to the costs of regulating COMSAT.

The Commission's licensees pay annual regulatory fees in accordance with the Commission's fee schedule and the various categories listed therein. The fees collected from are then used to enable the FCC to recover the costs that it incurs in carrying out enforcement, policy and rulemaking, international and user information activities.

Congress has expressly determined that the INTELSAT and Inmarsat satellites are not subject to annual space station fees because INTELSAT and Inmarsat are not FCC licensees and their decisions to procure satellites are not made by COMSAT.⁵ COMSAT, however, is not exempt from annual regulatory fees and pays other fees in accordance with the fee schedule, including bearer circuit fees -- fees which PanAmSat continues to try to dodge.⁶

PanAmSat and GE allege, without support, that COMSAT does not pay its "fair share" of the costs associated with

⁵ "The Committee intends that fees ... be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will only apply to space stations directly licenses by the Commission under Title III of the Act. Fees will not be applied to space stations operated by international organizations subject to the International Immunities Act [such as INTELSAT and Inmarsat]." H.R. Rep. No. 102-207, 102nd Cong., 1st Sess. 26; H.R. Rep. No. 103-213, 103^d Cong., 1st Sess. 499.

⁶ Comments of PanAmSat at 2-6.

regulating COMSAT. We believe that COMSAT pays regulatory fees which reasonably relate to the costs of regulating COMSAT. In 1998 alone, COMSAT's annual regulatory fees were approximately \$600,000; these fees likely could increase to \$800,000 and higher in 1999. Moreover, COMSAT continues to pay fees in accordance with Section 8 of the Act -- and to the extent they provide private carrier services, PanAmSat and GE pay considerably less in Section 8 fees.

If there are any additional costs associated with the Commission's regulatory oversight of COMSAT's activities, they should, in all fairness, be borne by all of the beneficiaries of those activities, not just by COMSAT alone. To a very substantial degree, the main beneficiaries are competitors of COMSAT, rather than COMSAT itself. Competing separate systems and operators of undersea cables, for example, benefit directly from FCC restrictions on U.S. domestic entry, rate regulation of thin routes, and other constraints on COMSAT's activities.

Moreover, in actuality, it is largely COMSAT's competitors that create the Commission's heavy workload by filing baseless and repetitive pleadings. In assessing regulatory fees, the Commission must recognize that its costs of regulating COMSAT are very often generated by COMSAT's competitors -- those who stand to gain the most by hamstringing COMSAT's ability to compete in the market.

II. The Commission may not accomplish indirectly what Congress has forbidden it to do directly.

It is clear that the Commission lacks statutory authority to impose a regulatory fee on COMSAT in its capacity as the U.S. Signatory to INTELSAT and Inmarsat. Further, as the Commission has specifically acknowledged, Congress expressly excepted COMSAT from paying a geosynchronous satellite regulatory fee. To quote the Commission: "the legislative history of Section 9 states that regulatory fees should not be assessed upon space stations operated by international bodies."⁷

PanAmSat asserts that language in the House Commerce Committee Report on H.R. 1872 (legislation which failed to pass) supports its theory that the Commission has authority to impose fees on the INTELSAT and Inmarsat satellites.⁸ PanAmSat's arguments are absurd. The Committee Report PanAmSat cites is a political document not a source of law or legal interpretation. It is clear that Committee Reports associated with subsequent unenacted bills cannot override, alter, or shed valid interpretative light on the language

⁷ Assessment and Collection of Regulatory Fees for FY 1995 at para. 110.

⁸ Comments of PanAmSat at 11.

and legislative history of the existing statute.⁹

Nor can the Commission impose any new category of fee on COMSAT. As the Court has made absolutely clear, the Commission's sole source of amendment authority permits it to amend the existing fee schedule only when there has been a change in the services rendered by the Commission as a consequence of Commission rulemaking proceedings or changes in law.¹⁰ Neither of these preconditions is applicable herein and the recommendations of PanAmSat and GE, if adopted by the Commission, would circumvent a direct statutory limitation on the Commission's authority.

In an attempt to overcome the *ultra vires* nature of their request, PanAmSat and GE suggest that regulation of COMSAT has changed sufficiently to warrant imposition of some fee designed specifically to recover the costs of regulating COMSAT.¹¹ However, neither PanAmSat nor GE offers any new legal or factual justification for this suggestion.

⁹ See 2A N. Singer, *Sutherland on Statutory Construction* at 48.10 pp. 319 and 321 n.11 (4th ed. 1984); *Pierce v. Underwood*, 487 U.S. 552, 566 (1988) ("[I]t is the function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means."); *Colorado Nurses Ass'n. v. Federal Labor Relations Auth.*, 851 F.2d 1486, 1490 (D.C. Cir. 1988 ("A law may be amended, superseded, or rescinded by another law, but not by legislative history"); *Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) ("subsequent legislative history is a 'hazardous basis for inferring the intent of an earlier' Congress") (internal citations omitted).

¹⁰ See *COMSAT Corp. v. Federal Communications Comm'n*, 114 F.2d at 225.

¹¹ Comments of PanAmSat at 11.

In support of their "changed circumstances" argument, GE and PanAmSat assert that COMSAT has been virtually "deregulated" and that the alleged disparity between the regulatory fees that PanAmSat/GE pay and those that COMSAT pays makes it difficult to compete on a "level playing field."¹² This argument borders on fantasy. First, the notion that COMSAT's regulatory fees should be increased when the level of regulation it faces has been decreased is absurd on its face. Second, the notion that the partial deregulation of COMSAT has put its competitors at a disadvantage which must be compensated for by an increase in COMSAT's fees is utterly without merit. Even with non-dominance, COMSAT is still much more heavily regulated than any of its competitors.

Conclusion

As set forth in detail above, COMSAT pays a share of annual regulatory fees which is reasonably related to the costs of regulating COMSAT, and there is no valid public interest reason for imposing any additional fees. The imposition of a space station fee or a Signatory fee would be duplicative, manifestly unfair and contrary to law.

¹² Comments of GE at 9-10.

Respectfully submitted,
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January 19, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of COMSAT Corporation was served by first-class mail, postage prepaid, this 19th day of January 1999, to each of the following:

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